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MINISTRY OF COMMERCE AND INDUSTRY  
PUBLIC NOTICE

IMPORT TRADE CONTROL

New Delhi, the 19th March 1958

SUBJECT:—*Transfer or Division of Quotas—Procedure regarding.*

No. 21-ITC(PN)/58.—Established Importers are granted licences on the basis of their past imports. Such licences are granted on the presupposition that no change has taken place in the constitution or the name of the applicant firm. When a change has occurred in the constitution or the name of a firm or the business has changed hands, the reconstituted firm will not be entitled to the quotas of the original firm until the transfer of quota rights in its favour has been approved by the Chief Controller of Imports & Exports, or the licensing authority concerned in cases covered by paras. 5(a) (iv), 5(a) (v) and 6(ii) below.

2. No transfer of quota rights is involved in the following cases:—

- (i) Changes in the constitution of a firm claiming licences as actual users only.
- (ii) Change of *directors* or shareholders in a Public or Private Ltd. Co.

3. Transfer of quota rights will not be granted in the following cases:—

- (i) Where a firm is dissolved or ceases to carry on business without making provision for transfer of its business etc.
- (ii) Where a firm is declared to be insolvent or being a limited company is wound up, and no arrangement has been made for transfer of its business etc.

4. The expression 'firm' used herein means owner of the business, whether an individual or a partnership or an Undivided Hindu Family or a Corporate body like a public or private limited company.

5. The following are the general principles followed in regard to transfer of quota rights:—

(a) Transfer of quota rights:—

- (i) Where the business of a firm is transferred together with all its assets, liabilities and goodwill to another firm, so as to constitute it as its successor in all respects, the transferee firm shall get the quota rights of the transferor firm. Quota rights will not be transferred from a limited company to other person.
- (ii) Where a firm consists of several partners and its constitution undergoes a change by retirement of some partner(s) or admission of new partner(s), the reconstituted firm, continuing the original business in the same name or any other name and taking over all its assets and liabilities will be granted the quota rights of the original firm. In the event of change of name, it should be provided in the agreement

that the old name will not be used for purposes of import/export trade by either of parties *viz.* the outgoing and the continuing partners.

- (iii) Where a sole proprietor dies the quota rights will be transferred to his legal heirs.
- (iv) Where a firm changes its name without any change in its constitution, its quota rights will be transferred to its new name provided it has ceased to do business in the old name and title.
- (v) Where a Private Ltd, Co., is changed into a public one and *vice versa*, the quota rights will be transferred to the new name

(b) Division of quota rights—

Where a firm is dissolved, and the partners agree to divide its business, assets, and liabilities and its goodwill is taken over by one or some of the partners, or none of them is allowed to use it, the partners shall get their respective shares in the quota rights according to the provision in the agreement.

6. *Registration of Documents.*—Documents which contain partnership agreements or provide for dissolution of partnership or for transfer of business shall be considered for the purpose of transfer of quota rights only if they have been registered under the Indian Registration Act, 1908. The condition will be relaxed:—

- (i) where a deed has been executed prior to the issue of Public Notice No. 15-ITC(PN)/52, dated 28th February, 1952; and
- (ii) where father/mother takes in his/her son(s), daughter(s) as partner(s), and where any member of the partnership so constituted retires.

Registration of documents sometimes takes a long time. To avoid hardship to the trade copies of the said documents, if filed for registration, will be considered if they are certified as true copies of the documents lodged for registration by any advocate, pleader, solicitor or a J.P. The original receipt issued by the Registrar should also be produced alongwith the certified copies of the documents. In such cases, transfer of quota rights if otherwise due, will be allowed subject to production of the original deed or deeds in due course.

7. Parties claiming transfer of quota rights are required to produce the following documents in addition to any other evidence which they may like, or may be required to furnish in support of their case:—

- (A) Documentary evidence to be produced, under paras. 5(a)(i) & (ii)—  
Changes in the constitution of the firm may have taken place due to:—
  - (i) Admission of a partner.
  - (ii) Retirement of a partner.
  - (iii) Death of a partner.
  - (iv) Transfer of business by one person to another.

All deeds evidencing any of the above events since the commencement of business or 1st April, 1945 or since the last transfer of quota rights whichever is later, should be produced.

The deeds produced should show clearly that the applicant is a full successor to the business either from its commencement or from 1st April 1945 or since the last transfer of quota rights whichever is later, and that every person other than the applicant who was connected with the business since the above date has relinquished his claim to quota rights. Where there has been a death of any person connected with the business since the above date, an affidavit should be produced showing relinquishment by the heirs either according to the will or, if there is no will, by the natural heirs. A certified true copy of the will, if any, as proved in a court will also be necessary in such a case. Where there is transfer of business by one person to another, the deed of transfer by whatever name called, should be signed by both the transferor and the transferee and should provide in clear terms for transfer of the entire assets, liabilities and goodwill of the transferor.

Subject to the exceptions mentioned in para 6, all deeds which evidence the changes in the constitution of the firm after 28th February, 1952 must have been registered under the Indian Registration Act, 1908 in order to be considered for the purpose of 1 of

The other documents required to be produced are:—

- (i) Income-tax Clearance Certificate (in the prescribed form) in respect of both the firms i.e. the firm whose quota rights are to be transferred and the firm claiming the quota rights, showing *inter alia* their constitution, the date of establishment of business, name(s) of proprietor/partners/director(s)/shareholder(s), particulars of branches etc.
- (ii) Cuttings of advertisements in two newspapers one local and the other a leading English or Hindi Daily notifying claims for transfer of quota rights and calling for objections against the proposed transfer to be sent to the Chief Controller of Imports & Exports, New Delhi, or the licensing authority concerned, within three weeks from the date of advertisement.
- (iii) In the case of partnership concerns—extracts from the register of firms under the Indian Partnership Act, 1932, showing all the changes in the firm and particulars of branches etc., since 1st April 1945, or the commencement of the original firm, or the last transfer of quota rights whichever is later.
- (iv) Where the transfer is made to a limited company a certificate of incorporation under the Companies Act of that company, or a certified true copy thereof.

(B) Under Para. 5(a)(iii)—

- (i) Death Certificate in respect of the deceased.
- (ii) Where the deceased has left a will, a copy of the will as proved in Court.
- (iii) Where there is no will an affidavit from all the legal heirs of the deceased (in case of minors through their guardians) on an adequately stamped paper sworn in before a first class magistrate or an oath commissioner to the effect that they are the only legal heirs of the deceased and that they have taken over the entire outgoing business goodwill etc. In case any of the heirs has relinquished his rights in favour of others an affidavit from him stating so in clear terms.
- (iv) Income-tax Clearance Certificate (in the prescribed form) in respect of the both the firms i.e. the firm whose quota rights are to be transferred and the firm claiming the quota rights showing *inter alia* their constitution, the date of establishment of business, name of proprietor(s), particulars of branches etc.
- (v) Cuttings of advertisements in two newspapers one local and the other a leading English or Hindu Daily notifying claim for transfer of quota rights and calling for objections against the proposed transfer to be sent to the Chief Controller of Imports and Exports, New Delhi, within three weeks from the date of advertisement.
- (vi) Where the heirs enter into partnership, the deed of partnership so constituted.

(C) Under paragraph 5(a)(iv)—

- (i) An affidavit on an adequately stamped paper and sworn in before a first class Magistrate or an Oath Commissioner indicating the date of establishment of business, the constitution of firm, name(s) of Proprietor/Partners particulars of branch or branches and declaring *inter alia* that:—
  - (a) There has never been any change in the constitution of the firm;
  - (b) they have ceased to function in the old name and will not do so in future; and
  - (c) the applicant firm was/is not a branch of any other concern.
- (ii) Income-tax Clearance Certificates (in the prescribed form) of the firm under the old name and also under the new name indicating *inter alia* their constitution, date of establishment of business, name(s) of Partners particulars of branches etc.

- (iii) Cutting of advertisements from the newspapers one local and the other a leading English or Hindi Daily notifying claim for the transfer of quota rights to the new name and calling for objections against the proposed transfer to be sent to the licensing authority concerned, within three weeks from the date of advertisement.

(D) Under Para 5(a)(v)—

(a) Incorporation Certificate, or a certified true copy thereof.

(b) An affidavit from the Managing Director of the company on adequately stamped paper and sworn in before a first Class Magistrate or an Oath Commissioner that the company has changed from a private/public limited to a public/private limited company and that it will not claim quota rights in the old name.

(E) Under Para 5(b)—

(i) All documents required under para. 4(a)(i) & (ii);

(ii) Final deed of dissolution of partnership;

(iii) Affidavit of all claimants to quota rights on an adequately stamped paper and sworn in before a first class Magistrate or an Oath Commissioner that they will choose a common basic year for calculation of quotas of similar items.

8. The applicants should produce a certified copy of the deed or deeds for record in the office of the Chief Controller of Imports & Exports, New Delhi/licensing authority concerned. Where a Deed is in a language other than English, the claimant should also produce its English version, duly certified by an advocate or pleader, to the effect that it is a true translation of the original deed.

9. Applications for transfer/division of quota rights will not be entertained unless they are accompanied by all the documents complete in all respects.

10. Where a change has occurred in the constitution of a firm, it is not entitled to a licence unless there is a transfer of quota rights in favour of the new firm.

S. N. BILGRAMI, Jt. Secy.